SUMMARY
Virginia Housing Commission
Timeshare Sub-Workgroup
House Room C, General Assembly Building
November 1, 2012
1:30 PM

I. Welcome and Call to Order

- **Delegate John A. Cosgrove,** *Chair* called the meeting to order at 1:30PM.
  - In addition to the invited speakers the following Workgroup members were in attendance:
    - Legislators: Delegate John A. Cosgrove, *Chair*; Delegate Barry D. Knight
    - Non-Legislator Workgroup Members: Pam Coerse, *Virginia Resort Development Association*; Bill Ernst, *Dept. of Housing & Community Development*; Heather Gillespie, *DPOR*; Rob Hagerty, Trisha Henshaw, *CIC Executive Director*; Michael Levinson; Joseph Mayes, Williams Mullen; Lori Overholt, *VSA Resorts*; McGuire Woods; Philip Richardson, *Eck, Collins & Richardson*; Jackie Riggs, *Executive Director of Goldkey Resorts*
    - Staff: Elizabeth Palen, *Executive Director of VHC*

II. Commissioner of Accounts/Fee Increases

- **Amigo Wade:** *Legislative Services***:** stated that wanted to two issues**.** Firstly, he wanted to be sure that bill does not violate the Impairment of Contracts provision of the Virginia Constitution. On line 32 of attached legislation, (trying to capture that time share estates and time share uses,) provision gives the developer an option to go either way if it's a time share use program. This new provision is retroactive such that it does not conflict with the contract documents. He stated that the language will remain the same, but the percentage will be raised from 10% to 20%.

III. Developer Control Period

- **Mr. Wade:** This bill gives an option (for a situation where common elements go over) to the member association. Line 2 of the Enactment Clause (of attached legislation) clarifies legislative intent for the provision to be retroactive. He added that unless the contract notes expressly otherwise, this third option of developer control would occur.
- **Del. Cosgrove**: 90% of timeshares exclude requisitions by the developer.
- **Michael Levinson,** *VSA Resorts*: Termination of development control applies to time share estate programs. This is an example of shaping a time share concept around a condominium concept to the extent that this legislation is curative. This reflects the fact that at 90% sell-out a time share developer is significantly invested in the project, unlike condominium investors.

Time share developers offer owner financing, and the large majority of time-share purchasers take advantage of that financing. At 90% sellout, the development may own up to 40% of the notes secured by time share interest in the project.

- This legislation is to recognize that interest, as retaining the developer in the project is in the interest of the consumer. The developer wants to control the product, and not subject it to the vicissitudes of an owner base or Time-Share Owner's Association that may not have the desire or expertise to manage the project. That was the impetuous for legislative change.

- This portion of the act was modeled after the condominium act. The common areas of the project conveyed to owner's association just like it occurs in condominium project. The problem remains that with condominium project, you are dealing with people who live there permanently. Time share owners, however, only occupy the space for a short period of time, if at all, and, thus, do not have same ownership interest. However, the developer does have that interest to protect their financial investment and keep the area in prime condition.. This was the motivation behind the change of the statute
- **Mr. Stuart Sadler:** I understand the justification for new language in line 32, but I am not sure that it is necessary since anything that was against the law would be void already under (55.365.1) of the existing Time Share Act. The concern I have with respect to the language would it be possible to draft a time share instrument to further extend the period of developer control.
    - There is issue related to line 37, where word promised was added. I found it interesting to allow sale of timeshare before they are completed if they are bonded. Why would promise be necessary if they were bonded? There are several concerns about the language. Problem with language in Line 42-43; we find examples when time share developers may refuse to give up control of the association.
    - This would give a developer a substantially longer period where they could take advantage of their position controlling the association. Developers do not just make money selling condominiums or selling notes, they also make money in managing condominiums and renting condominiums. With way things are currently done with most developers, they take all the revenue and expenses have shifted on to owner. Useful for current exemption for management of timeshare association were subject to CIC Board review. However, currently it is not.
    - When providing an extended developer control period there is functionally no way for time share owners to interact easily. If you take a look at what the condominium act in (55-7975:1) there is a requirement that could easily be applied to timeshares that would allow an easy way to communicate with each other.
    - Concerning the language added on page 2, it very common for developers in this (state?) not to give up control under the current law. Is it your intention to authorize and ratify that illegal activity at this time?
- **Mr. Wade:** We could rectify that. The new provision to be able to be used if it is not in conflict with the instruments. When this passes, although we have used this language for other things with common interest communities, it could be read that the other two instances

currently there could be changed. One way of dealing would be to take the "except to the extent" language and put that in the enactment clause so that the intent would be clear. (The legislative intent that to the extent that purchase contractor or time share instruments.)To the extent that they do not say otherwise then the provision of this act would provide an additional option. That may be a way to prevent a situation that someone used it to extend the other two provisions.

- In last year's Virginia Resort Development Association package of legislation, there was a specific amendment to (55-370). VRDA thought it made sense for the developer, the association, and the consumer, since the consumer ultimately pays the (freight). Concerning, Owner's Association foreclosing on timeshare. Often the amount of money involved is diminimus because we are dealing with foreclosure on unpaid assessments. The owner does not want timeshare anymore, and the association needs he timeshare back so it can recycle the time-share and fine a fee paying member of the association, since they need fees to pay their expenses.
    - The only people profiting from this requirement were the commissioners of accounts. However, after speaking to the commissioners of accounts, they were also unhappy with the process. This legislation was to eliminate the requirement that the accountings be held for a year but not required to go through the process presenting to the commissioner of accounts for his review and to record these. This requirement imposed because time share estates are real estate. If foreclosing on a time share use or club membership, they would be more in the line with personal property, and whole different methodology would be required and would not require the review. That is the impetus for this legislation that should be imposed because they are times share estates are treated like condominium estates when they are not.
- This provision only relates to lien foreclosure, not relate to developer deed of trust foreclosures. Ultimately, the association and owners who pay for the foreclosure. Last year, we tried to cut cost by reducing the advertising requirements. Unfortunately through this happenstance, we now increased the foreclosure costs, because we increased the commissioner's fee. That's what we're trying to correct this year.
- **Mr. Levinson:** If you look at this from the perspective of the commissioner of accounts, you would perform this review on a batch basis, with 100-200 foreclosures on the same day at the same time. This is done to streamline the process and have it make economic sense When all of this sent to commissioner of accounts, they look at the batch of packages, which only differ from each other by unit number and name of owner. I do not see any reason for submission of accounting to commissioner in this situation anyway, and I heartily agree with notion of an obligation to prepare the accountings.
    - There should also be some measure for those to be available for inspection, but I do not see any reason for a fee to be associated. In my experience, I found that commissioners of accounts think the process is a pain.
- **Del. Cosgrove:** Is that fee applied to each individual foreclosure and not as a package?
- This change increased the cost of a typical foreclosure by $30,000-40,000.
- **Delegate Knight:** In committee, we will be looking at some options. If they do not really think we are doing the public any favors doing this or commissioner of accounts, then all we

are doing is making some extra money for lawyers; If we strike it, and if its legal, you know how we will vote on committee

- **Del. Cosgrove:** I think Del. Knight know's our position on this, and it is best to strike commissioner of account requirement; Mr. Wade can have a draft ready for November?
- **Mr. Wade:** I would be happy to work with you on that.

IV. Public Comment

- **Del. Cosgrove** invited those from the public to comment.

V. Adjourn

- Hearing no other comments, **Del. Cosgrove** adjourned the meeting at 2:15